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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. SIDNEY RAY POE, JR., Defendant and Appellant.	A140447 (Alameda County Super. Ct. No. CH51499)

Defendant Sidney Ray Poe, Jr. was convicted of attempted murder, shooting at an occupied motor vehicle, and shooting at an inhabited dwelling. Enhancements for personal use of a firearm and for personally discharging a firearm were also found true. Defendant was sentenced to an aggregate term of 35 years in prison. Defendant's appeal raises a single argument: the trial court erred in denying his *Batson/Wheeler* motion. We conclude the argument has no merit, and affirm.

BACKGROUND

The Facts

The facts are not pertinent to the one issue before us, and need not be set forth in detail. The essential facts are these:

Shortly after midnight on March 18, 2011, Fernando Hernandez was driving in San Lorenzo with three passengers in his car: Brian Renteria, Ruben Estrada, and Manuel Avalos. While Hernandez's car was in the intersection of Via Toledo and Paseo Grande, a gold Buick pulled up next to them, and a passenger in the Buick, later identified as defendant, "mean-mug[ged]" them. Hernandez and the others heard

gunshots, and Hernandez saw a muzzle flash from inside the Buick. Hernandez quickly drove off, accelerating to 40 miles per hour, but the Buick stayed with them. Avalos, who was in the back seat, had been shot, and Hernandez drove to the Eden Township Substation to report what happened. Clarice Sarente, who lived in the neighborhood, also reported that the front window of her house had been shattered by gunfire.

Officers responded to the scene, saw a gold Buick in close proximity to the reported incident, and pulled it over. Two people were inside: Joe Lupe Yepez, who was driving, and defendant in the passenger seat. Both were identified, detained, and searched. In defendant's front pants pockets the officers found a pistol magazine containing nine rounds of nine-millimeter ammunition. A Glock semi-automatic pistol was found in front of the passenger seat, with a live round in the chamber.

Defendant testified at trial, telling essentially the same story he told the officers in a statement in which he admitting the shooting: late on the evening of March 17, 2011, he was at his residence when he was confronted and robbed inside the garage. Defendant described the suspects as two Hispanic males armed with handguns who took cash from his wallet, two cell phones, house keys, and car keys. He armed himself with the Glock, co-defendant Yepez picked him up, and they saw Hernandez's car and believed it was associated with the robbery. Defendant admitted to shooting at the vehicle about six times.

The Proceedings Below

On February 14, 2013, the Alameda County District Attorney filed an amended information charging defendant and Yepez with 10 counts: counts 1, 3, 5, and 7, attempted murder (Pen. Code, §§ 187, subd. (a), 664); counts 2, 4, 6, and 8, assault with a semiautomatic firearm (*id.*, § 245, subd. (b)); count 9, shooting at an occupied motor vehicle (*id.*, § 246); and count 10, shooting at an inhabited dwelling (*id.*, § 246). As to counts 1, 3, 5, and 7, defendant was charged with enhancements for personally using and discharging a firearm (*id.*, § 12022.53, subds. (b)–(g)).

Defendant, who is African-American, and Yepez, who is Latino, were tried together, in a jury trial that began on February 13, 2013. On March 18, the jury returned

its verdicts, finding defendant guilty on all counts and the firearm enhancements true. The jury found Yepez not guilty.

Defendant was sentenced to an aggregate term of 35 years in prison.

The Issue

As noted, defendant makes only one argument on appeal, that the trial court erred when it denied his *Batson*/*Wheeler*[1] motion, a motion in fact made on behalf of co-defendant Yepez, and in which defendant joined. The issue arose as follows:

After introductory matters, jury selection began with the prospective jurors answering questionnaires. Following the excuses for hardship, 81 prospective jurors remained, four or five of whom were African-American.[2]

The court chose to use the six-pack method of jury selection, and on February 25, 18 prospective jurors were called by the clerk and seated in the jury box. One of the 18 was African-American—F.B.[3] According to his responses to the questionnaire, F.B. was 56 years old, had lived in Alameda County for 30 years, and worked for the United States Postal Service (Postal Service). In response to the question, "Have you, a member of your family or a close friend ever been arrested for, accused of, or convicted of any crime, including driving while under the influence of alcohol or drugs?," F.B. answered, "No." He also stated he had never witnessed, or been the victim of, a crime, and had never had a good or bad experience with a police officer. He had been the victim of sexual harassment.

During the prosecutor's questioning of F.B., he confirmed some of the information on his questionnaire, including that he had lived in Oakland for 30 years, had never witnessed a crime, and did not know victims of any crime. As to the last item, F.B. said,

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[1] *Batson v. Kentucky* (1986) 476 U.S. 79, 89 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258, 276–277 (*Wheeler*), disapproved in *Johnson v. California* (2005) 545 U.S. 162, 168.

[2] It is possible there were more, as four prospective jurors did not state their race on their questionnaire and one questionnaire was lost.

[3] We identify the juror as "F.B." for consistency with the parties' briefs.

"Not really. Just news. Not involved." The prosecutor asked, "Nothing even—never had your car broken into or anything like that?" F.B. said, "Yeah, stuff like that, yeah," and went on to admit that his car had been broken into, his car had been stolen, and that he had reported some crimes to the police.

The prosecutor then asked F.B. about his answer that he had been "harassed at work," and F.B. responded that he "had problems with racism, stuff like that." It developed that F.B. was currently involved in a lawsuit in Alameda County against the Postal Service—a lawsuit, F.B. confirmed, that was a pretty big deal.

Defendant's attorney briefly questioned F.B., following which the court broke for the lunch recess. The prosecutor went to his office. As the prosecutor would later advise the court, he had requested staff to run rap sheets on all prospective jurors, but this had not been done. So, the prosecutor on his own ran the rap sheet for F.B.

That afternoon, the prosecutor exercised his second peremptory challenge, and excused F.B. The court said, "[F.B.]. Thank you," after which Yepez's counsel asked to approach the bench. The reporter's transcript then indicates "[a] discussion was held at the bench but not reported."

The next day, at the conclusion of jury selection, the court noted that Yepez's attorney "properly noticed a *Wheeler* motion," and asked the attorney if she wanted to put something on the record. Yepez's attorney responded that "in response to the prosecutor excusing [F.B.] . . . before he was excused, I made a *Wheeler/Batson* motion. . . . Based on the fact that, after the break, I believe it was the lunch break, we came in and Mr. Pastran [the prosecutor] had given . . . Mr. Broome [defendant's attorney] and myself, the criminal history for one juror, and that was [F.B.]. [¶] And I asked Mr. Pastran at that point where the rest of the histories were and who else had been ran, and he indicated nobody. He ran one individual, [F.B.], the only African-American seated in the 18 pack and, by my estimation, I believe one of three African-Americans in the entire panel."[4]

[4] At this point the court said, "That's not true. . . . [¶] . . . [¶] There were about four or five," including one of whom Yepez's attorney had challenged for cause.

Defendant's attorney joined Yepez's motion, adding that "this was an extremely limited panel as far as African-Americans were concerned."

The trial court asked the prosecutor if he "want[ed] to be heard," and the prosecutor said, "I do want to augment the record, Your Honor. I don't believe a prima facie case has been established. However, that aside, I do want to respond to some of the comments so that it is in the record." And respond he did, going on for some five pages, during some of which he was interrupted by questions or comments from the court.

The prosecutor began by describing the motion as "tactical," that is, to discourage the prosecutor from challenging any other minority prospective jurors.

The prosecutor then said that his peremptory challenge had to be exercised on one of the 12 prospective jurors in the jury box, and that he was concerned with only two of those 12: "Of the first 12 that were in the box, the only people of those 12 that had limited information on their questionnaires were Juror No. 7 . . . and [F.B.] which would have been Juror No. 12. [¶] I was more concerned about [F.B.] because of his answers, in particular to him filing a lawsuit against the U.S. Postal Department, for one thing."

The prosecutor then noted that in response to the question whether F.B. had experienced "racial, sexual, religious, and/or ethnic prejudice," he had answered "only 'sexual harassment,' " and "When I asked him further about that, he said, in addition to that, it was racial harassment. And when I questioned him even further, he said he was currently involved with litigation with the U.S. Postal Department." And the prosecutor went on: "There can only be, in my mind, one or two scenarios here. [F.B.] is, in fact, a true victim or [F.B.] is not. I would take the chance, should I have kept [F.B.], that he may be involved in some unfair litigation or litigation where he perceived himself to be a victim. [¶] I fully anticipate that in this case that is going to be part of the defense, at least in part with respect to Mr. Poe. It seems like no surprise to myself or anybody, through the questioning or through discussions with Mr. Broome, that the issue is going to be that Mr. Poe is going to say him and his wife were victimized and therefore he had to respond in kind with self-defense or force. [¶] I don't believe it's a meritorious claim. However, I certainly don't want somebody who I don't know if they're going to relate to

the victim, I don't know if they're going to associate me potentially with the government, as again he's involved in litigation in a government-type agency."

Next, the prosecutor referred to the "dynamics of jury selection," and explained that he had 20 peremptory challenges, that F.B. was "an unknown quantity" and there were two favorable prospective jurors directly in line behind F.B.: "When I have somebody who's an unknown quantity and I have 20 peremptory challenges, certainly I'm going to do my best to make sure that I can leverage that, to use it to get people whom I believe are going to be more fair to the prosecution, especially when I'm comparing it against somebody whom again I don't know where their loyalties are going to land."

The prosecutor then turned to the argument by Yepez's attorney to the effect that he had run only the rap sheet for F.B., and explained what in fact occurred: "Miss Moore also mentions, put great emphasis on the fact that somehow I only ran him as opposed to 101 people. I gave the entire list to be run by one of the secretaries upstairs. And I went upstairs to see if she had, in fact, run anyone. It turned out she hadn't at that point because she was running somebody else. Again there's a bunch of jury trials occurring right now in this courthouse so she hadn't got to my list yet. [¶] In the limited time I have, in addition to eating my lunch and organizing my case, I didn't have time to run all 12 and certainly not near all 100. [¶] And so the record is clear, I don't think this has been put on the record, but I have, to the extent I've ever gained any information about the potential jurors, that has been passed over to the defense as soon as I've got it throughout this case and they've had the opportunity to look at it."

The prosecutor next indicated that he found it "strange" that F.B. was in an "urban environment" yet had not witnessed a crime.[5]

The prosecutor then explained that when he questioned F.B. and he said "there was more to this situation with this potential litigation that he's involved with, I felt that

[5] To which the court responded that it had not been a crime victim, despite living in the area for almost 40 years.

there was potentially more that he was not being forthcoming with. And in response to that, that is why I keyed into that hunch and went upstairs and ran him. And I would add, for the record, that, in fact, I was correct." F.B. had "an arrest for misdemeanor [section] 647(b) [prostitution] from 1985 and an arrest for [Vehicle Code section] 14601 [driving with a suspended license] that was dismissed." And the prosecutor continued: "Now, it wasn't earth shattering but it certainly was of concern to me when so many other jurors had been so forthright in the offenses that they had suffered in their lives. [¶] [F.B.], for the record, has an arrest for misdemeanor . . . . [S]omebody might forget about that, although it is still concerning. I am a little bit more concerned about the prostitution. I find it difficult to believe that someone could at least be arrested for, I don't know the circumstances, but I guess allegedly engaging in a prostitution act or soliciting it and not remembering that. That is a concern to me any time somebody is not forthright.

"We saw, as an example throughout this entire case, people talking about instances that happened long ago in different counties and even in a different state and they've still thought it important to bring it forth to the court.

"So for all those reasons, Your Honor, I felt [F.B.] was a valid challenge. It certainly had nothing to do with race. And parenthetically, I do always take these, when they are brought forth, I do take some offense to it. It's offensive to try to say I'm a racist or say anything along those sources, especially since I am a member of a minority group as well who has experienced racism. So it's always kind of, parenthetically, it's just one other thing that I feel again goes to the extreme lack of making this a meritorious claim."

The trial court ruled, "The first thing is I don't think there's a prima facie case. There's only one challenge. Out of all the jurors that were here, he only challenged one person for cause so it doesn't rise really to the level of a prima facie case. [¶] . . . [¶] We've had prima facie cases before but it always is more than just one single juror. And it doesn't matter whether they have a conviction or not, as long as he has a rational reason, but we haven't even gotten to that level yet. [¶] So the other thing you might want to remember is that we don't really get to that point unless you've used all your

challenges. And no one used all of their challenges for the 12." "So the court finds there's no prima facie case here involving *Wheeler-Batson*, so that lays that issue to rest."

The jury as sworn had no African-Americans on it.

DISCUSSION

The General Principles

The general rules regarding claimed *Batson*/*Wheeler* error are settled, set forth, for example, in *People v. Manibusan* (2013) 58 Cal.4th 40, 75–76:

"A three-step procedure applies at trial when a defendant alleges discriminatory use of peremptory challenges. First, the defendant must make a prima facie showing that the prosecution exercised a challenge based on impermissible criteria. Second, if the trial court finds a prima facie case, then the prosecution must offer nondiscriminatory reasons for the challenge. Third, the trial court must determine whether the prosecution's offered justification is credible and whether, in light of all relevant circumstances, the defendant has shown purposeful race discrimination. (*People v. Lenix* (2008) 44 Cal.4th 602, 612 (*Lenix*).) 'The ultimate burden of persuasion regarding [discriminatory] motivation rests with, and never shifts from, the [defendant].' (*Id.* at pp. 612–613.)

"On appeal, we review the trial court's determination deferentially, 'examining only whether substantial evidence supports its conclusions. [Citation.]' (*Lenix, supra,* 44 Cal.4th at p. 613.) 'We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court's ability to distinguish bona fide reasons from sham excuses. [Citation.] So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal. [Citation.]' *(People v. Burgener* (2003) 29 Cal.4th 833, 864.)" (Accord, *People v. Williams* (2013) 56 Cal.4th 630, 650.)

Lenix expressed it this way: "At the third stage of the *Wheeler*/*Batson* inquiry, 'the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.' (*Miller-El*

[*v. Cockrell* (2003)] 537 U.S. [322,] 339.) In assessing credibility, the court draws upon its contemporaneous observations of the voir dire. It may also rely on the court's own experiences as a lawyer and bench officer in the community, and even the common practices of the advocate and the office that employs him or her. (See *Wheeler*, *supra*, 22 Cal.3d at p. 281.)

"Review of a trial court's denial of a *Wheeler*/*Batson* motion is deferential, examining only whether substantial evidence supports its conclusions. (*People v. Bonilla* [2007] 41 Cal.4th [313,] 341–342.) 'We review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges " 'with great restraint.' " ' " (*Lenix*, *supra*, 44 Cal.4th at p. 613, fn. omitted.)

The Supreme Court has "made clear that 'the trial court is not required to explain on the record its ruling on a *Batson*/*Wheeler* motion. (*People v. Reynoso* [2003] 31 Cal.4th [903,] 919.) "When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings." (*People v. Silva* (2001) 25 Cal.4th 345, 386.)' ([*People v.*] *Vines* [2011] 51 Cal.4th 830, 849.)" (*People v. Mai* (2013) 57 Cal.4th 986, 1054; accord, *People v. Hensley* (2014) 59 Cal.4th 788, 803.)

Introduction to the Discussion

The parties do not agree on the effect of the court's ruling below—and thus what is the issue before us. Specifically:

Defendant contends that the "trial court applied an incorrect legal standard in finding appellant failed to meet his stage one burden." Defendant cites to the literal language of the court—"I don't think there's a prima facie case"—to assert that the court held defendant did not meet his stage one burden.

The Attorney General responds that defendant "*may* be correct, but an alternative interpretation is just as plausible. [¶] It is unclear whether the trial court thought that a prima facie case *required* a pattern of multiple challenges, or if it simply thought that the single challenge was the main reason, when considering the totality of the circumstances, that there was not a prima facie case."

Then, after citing one United States Supreme Court case, the Attorney General quotes the observation of the California Supreme Court, that while even the exclusion of a single prospective juror may be the product of an improper group bias, " 'As a practical matter, however, the challenge of one or two jurors can rarely suggest a *pattern* of impermissible exclusion.' " (*People v. Bell* (2007) 40 Cal.4th 582, 598, quoting *People v. Harvey* (1984) 163 Cal.App.3d 90, 111.)

The Attorney General continues: "It is possible that the trial court thought that, as a matter of law, one peremptory challenge was insufficient to establish purposeful discrimination. In that case, the trial court applied the wrong legal standard, and this Court should review its ruling de novo. On the other hand, the trial court may have understood that it was supposed to look at the totality of the circumstances. And it just thought that, without more, the single challenge did not establish a prima facie case. (See *People v. Bell, supra,* 40 Cal.4th at p. 598 [the challenge of one or two jurors rarely suggests a discriminatory purpose].)

But, the Attorney General candidly goes on, "The problem with that view is that there was more. The defendants based their *Batson*/*Wheeler* motion on the fact that the prosecutor ran a rap sheet on F.B. The trial court did not address that reason. So it is difficult to know whether the trial court simply disregarded that reason as insignificant or irrelevant, or incorrectly thought it did not have to consider that reason because one challenge was insufficient as a matter of law."

Against all that, the Attorney General discusses *People v. Avila* (2006) 38 Cal.4th 491 (*Avila*), which she describes as "instructive," and which, in her words, involved "a situation very similar to what happened in the present matter,"[6] and where the Supreme Court concluded that the trial court's decision was not entitled to deference. And the

[6] As described in *Avila*, "The trial court . . . did not articulate the standard it used in ruling that no prima facie case of group bias had been shown as to the excusal of Prospective Juror S.A. The court, however, noted that 'no pattern' had been established, and when Richard asserted there need not be more than one excusal for the court to find a violation, it disagreed, stating case law indicated there must be a 'pattern or a prima facie case.' " (*Avila, supra,* 38 Cal.4th at p. 553.)

Attorney General concludes, "The same considerations apply here. Therefore, it seems prudent to 'assume, arguendo, that the court's decision is not entitled to deference.' " (See also *People v. Bonilla, supra,* 41 Cal.4th at pp. 341–342, noting that where it is unclear whether the trial court applied the correct standard in finding that defendant failed to state a prima facie case of discrimination, the appellate court must review the record " 'independently' " to determine " ' "whether the record supports an inference that the prosecutor excused a juror" on a prohibited discriminatory basis' "; accord, *People v. Howard* (2008) 42 Cal.4th 1000, 1017 ["[w]here . . . it is not clear whether the trial court used the reasonable inference standard, we review the record independently"].)

And so we proceed, without deference to the trial court's ruling.

At the same time, we deem it unnecessary to determine in the first instance whether the motion demonstrated a step one showing of a prima facie case. Rather, we will follow the practice suggested in *People v. Scott* (2015) 61 Cal.4th 363, where the Supreme Court explained that even when a trial court finds no prima facie case, the preferred practice is to allow the prosecutor to state his reasons for the challenge on the record, a practice that permits the reviewing court to resolve the matter even if it finds that the trial court erred in finding there was no prima facie case. (*Id.* at p. 388.) Here, the prosecutor put his reasons for the challenge on the record—a record, we conclude, that rebutted any inference of racial discrimination. (*People v. Silva, supra,* 25 Cal.4th at p. 384.)

There Was No *Batson*/*Wheeler* Violation

Defendant's substantive arguments both focus on the fact the prosecutor obtained F.B.'s rap sheet, and apparently no other. Thus, defendant first argues that "The Fact That The Only Rap Sheet Requested Was That Of The Only African American Prospective Juror In The Jury Box Supports The Inference That The Prosecutor Was Motivated By Prohibited Bias." The second argument is that "The Prosecutor's Reasons For Requesting F.B.'s Rap Sheet And No Others Are Implausible And Pretextual."

We disagree—and also disagree with defendant's treatment of the record.

To begin with, and contrary to defendant's argument that the prosecutor "request[ed] only F.B.'s rap sheet," the prosecutor represented that he in fact requested rap sheets for the entire venire, but the support staff was unable to provide them in a timely manner. So, with limited time during his lunch break, the prosecutor asked for the rap sheet on F.B. because he seemed to be particularly evasive—and the prosecutor had a hunch F.B. was hiding something. In short, the prosecutor singled out F.B. only after his request for a complete set of rap sheets went unfulfilled, and he chose the rap sheet of the prospective juror who concerned him the most.

Defendant also states that "the prosecutor devoted most of his statement to defending his request for F.B.'s rap sheets." We read the record differently, with the rap sheet explanation taking up less than a page of the prosecutor's five page statement of reasons.

Defendant also asserts that there was "nothing about" F.B.'s answers at voir dire "that suggested a need to investigate F.B.'s criminal history." To the contrary, in the course of voir dire, F.B. contradicted a few answers on his questionnaire. While F.B. indicated on his questionnaire that he had never been the victim of crime, and during voir dire confirmed he did not know any victims of crime, on further questioning he admitted his car had been broken into, his car had been stolen, and he had in fact reported some crimes to the police.

Likewise, the questionnaire asked, "Have you been exposed to racial, sexual, religious and/or ethnic prejudice?" F.B. checked, "Yes," and answered, "Sexual Harassment." However, during voir dire F.B. explained that he had filed a lawsuit, a lawsuit primarily about "racism," a lawsuit that he confirmed was "a pretty big deal." While it is not clear whether F.B.'s answer on the questionnaire was carelessly incomplete or intentionally misleading, he chose not to indicate "racial . . . prejudice" even thought it was a category explicitly listed on the questionnaire—and even though he later described that as the focus of his lawsuit. All of this supports a conclusion that the prosecutor ran F.B.'s rap sheet out of concern for his credibility, not his race.

There is a presumption the prosecutor acted properly, and it was defendant's burden to prove that the challenge was racially motivated. (See *People v. Manibusan, supra,* 58 Cal.4th at pp. 75–76; *People v. Trinh* (2014) 59 Cal.4th 216, 240–241.) The mere fact that the prosecutor ran a rap sheet on F.B. did not rebut the presumption.

Defendant's reply brief argues that the prosecutor's "failure to request any other rap sheets supports the inference that his request for F.B.'s rap sheet was motivated by prohibited group bias," and states that of the "18 prospective jurors seated 'in the box' before" the challenge of F.B., "only one acknowledged any personal criminal history." The brief goes on to list the 18 prospective jurors in a footnote, with their claimed responses (doing so without any record reference). Regardless, the fact is that what concerned the prosecutor was that F.B.'s answers during voir dire indicated his questionnaire answers were false. Defendant made no comparable showing as to the other 17 prospective jurors.

Defendant's other substantive argument, in nine short paragraphs, is that "the prosecutor's reasons for requesting F.B.'s rap sheet and no others are implausible and pretextual." The essence of defendant's argument is as follows:

"To justify his decision to investigate F.B.'s criminal history, the prosecutor needed to explain both why he requested appellant's rap sheet and why he requested nobody else's. With regard to the latter question, the prosecutor explained that his support staff had not obtained the rap sheets of the entire panel and that he had to make the requests himself during the lunch recess.

"The prosecutor claimed that 'in the limited time I have, in addition to eating my lunch and organizing my case, I didn't have time to run all 12 and certainly not near all 100.' The prosecutor failed to specify how long it would have taken to request additional rap sheets or how much time he had available to do so. This vague and evasive explanation supports the inference that the prosecutor had sufficient time to request more rap sheets but wanted to suggest that he did not.

"The prosecutor also claimed his concerns were focused on the responses of F.B. and Juror No. 7, both of whom gave 'limited' responses and that he ultimately requested

F.B.'s rap sheet because he had more concerns about F.B. than Juror No. 7. The prosecutor failed to explain why he did not request both rap sheets and nothing in his response suggests an explanation.

"The prosecutor claimed that he feared that as someone claiming to be a victim of discrimination, F.B. might identify with appellant, who was likely to claim self defense in firing a gun at a vehicle with four armed occupants. Appellant contends that it is ludicrous . . . ."

We conclude otherwise. To prove that the prosecutor's reason for running a rap sheet on F.B. was pretextual, defendant must show that there was either no good reason to check on F.B. or that other prospective jurors in the box should have raised equal or greater doubts. He has shown neither. Before the prosecutor even ran F.B.'s rap sheet, he had learned that F.B. did not answer truthfully in his questionnaire about having been the victim of a crime and that F.B omitted the fact that he had been subjected to sexual harassment, to the point he sued his employer, the Postal Service.

The record reflects that the prosecutor had legitimate reasons for challenging F.B., and defendant has not carried his burden of proving those reasons were pretextual. (See *People v. Arias* (1996) 13 Cal.4th 92, 136; *People v. Turner* (1994) 8 Cal.4th 137, 165.)

DISPOSITION

The judgment is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Stewart, J.

A140447; *P. v. Poe*